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DEPARTMENT OF CORRECTIONS
LANSING

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DIRECTOR'S OFFICE MEMORANDUM 2013 - 10

EFFECTIVE: January 1, 2013

DATE: December 13, 2012

TO: Executive Policy Team
Administrative Management Team
Wardens

FROM: Daniel H. Heyns, Director

SUBJECT: Parole of Illegal Aliens

SUPERSEDES 2012 - 11 (effective 2/1/12)

Prisoners who are not United States citizens are currently eligible for parole after they have served their minimum sentence minus any applicable credits unless they are serving for certain identified drug offenses. When paroled, these prisoners are routinely paroled to a detainer filed by the United States Immigration and Customs Enforcement (ICE) to allow for deportation. Public Act 223 of 2010, which took effect March 30, 2011, requires the Parole Board to parole an illegal alien who has a final order of deportation issued against him/her when the prisoner has served 1/2 of the minimum non-life sentence imposed by the court provided that ICE can assure the Department that the prisoner will be removed from the United States or, if that is not possible, that the prisoner will be returned to Department custody. This does not apply, however, to the following prisoners:

1. Prisoners who were sentenced as a habitual offender under MCL 769.10, 769.11, or 769.12.
2. Prisoners serving for either of the following offenses, including an attempt to commit the offense:
 - a. Murder in the first or second degree, being MCL 750.316 and 750.317.
 - b. Criminal Sexual Conduct in the first, second, or third degree, being MCL 750.520b, 750.520c, and 750.520d.

Prisoners who are not eligible for parole under PA 223, or cannot be placed on parole under the Act, remain eligible for parole as set forth in PD 06.05.104 "Parole Process".

The parole eligibility date established under PA 223 shall not be used to determine appropriate security classification or for any other reason except as set forth in PA 223 and this Director's Office Memorandum.

Implementation

Prior to the effective date of PA 223, the Department already had in place various measures to ensure ICE is notified whenever a prisoner is identified as not being a United States citizen so that ICE can determine whether to initiate deportation proceedings. For example, field agents provide an Immigration Notification form (CFJ-204) to ICE prior to sentencing. In addition, a Federal Bureau of Investigation Fingerprint Card (FD-249) is completed for each prisoner identified at a reception facility as not being a United States citizen, unless a card has already been completed for the prisoner. The Central Records Section in the Operations Division of Correctional Facilities Administrations also contacts ICE whenever a prisoner is identified during his/her incarceration as not being a United States citizen; this notification shall be within five business days after being brought to the attention of the Central Records Section.

To implement the requirements set forth in PA 223, the Central Records Section shall be responsible for notifying ICE of those prisoners who are identified as not being United States citizens to determine if ICE will initiate deportation proceedings against the prisoner. For each prisoner for whom a final deportation order has been issued who meets all other eligibility criteria for parole under PA 223, the Central Records Section shall compute and verify the PA 223 eligibility date. The Central Records Section also shall request written assurance from ICE that the deportation order will be executed and the prisoner removed from the United States; this notification shall be prior to the prisoner's PA 223 eligibility date or, if that date has already passed, as soon as possible. After a response is received from ICE, the case shall be referred to the Parole Release Unit in the Parole Board Services Section, Office of the Parole Board, for processing.

A parole under PA 223 is not discretionary; therefore, the prisoner is not entitled to a parole interview. In addition, parole guideline scores are not required to be calculated and Parole Eligibility Reports are not required to be completed. A parole under PA 223 shall be based solely upon whether the prisoner meets the eligibility requirements set forth in PA 223 and whether ICE has provided assurances that the deportation order will be executed and the prisoner removed from the United States.

If ICE cannot provide this assurance, the prisoner shall not be paroled under PA 223; however, the Central Records Section shall contact ICE on an ongoing basis to determine if ICE can provide the required assurance. If there is a change and ICE can provide assurance that the deportation order will be executed and the prisoner removed from the United States, the case shall be processed as set forth in this Director's Office Memorandum.

If ICE does provide this assurance, the prisoner shall be paroled to ICE's custody. A warrant for the paroled prisoner's return to the custody of the Department shall be issued and delivered to ICE when the paroled prisoner is transferred to ICE's custody. The warrant shall be executed upon notification from ICE that the paroled prisoner cannot be removed from the United States for any reason. The warrant shall be cancelled upon notification from ICE that the paroled prisoner has been removed.

Any parole under PA 223 is required to be for the remaining balance of the paroled prisoner's maximum sentence as imposed by the court. The Parole Board shall include as special conditions of parole that the paroled prisoner cannot return illegally to the United States and that the paroled prisoner must report for supervision if s/he returns legally to the United States. PA 223 also requires the Parole Board to revoke parole upon notification from any law enforcement agency that the paroled

prisoner has returned illegally to the United States and has been taken into custody. A paroled prisoner whose parole is revoked under PA 223 is not eligible for reparole, or any other release from confinement, during the remainder of the sentence on which s/he was paroled.

Questions regarding a prisoner's parole eligibility dates under PA 223 shall be referred to the Records Administrator, Central Records Section, for response.